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FORTY-NINTH SESSION

*Official Records*

SIXTH COMMITTEE
41st meeting
held on
Tuesday, 29 November 1994
at 10 a.m.
New York

# SUMMARY RECORD OF THE 41st MEETING

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| Chairman: | Mr. LAMPTEY | (Ghana) |
| later: | Mr. MADEJ (Vice-Chairman) | (Poland) |
| later: | Mr. LAMPTEY (Chairman) | (Ghana) |

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COMPLETION OF THE COMMITTEE'S WORK

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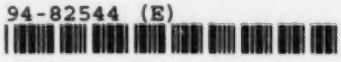

The meeting was called to order at 10.45 a.m.

AGENDA ITEM 143: CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY (continued) (A/C.6/49/L.25)

Draft resolution A/C.6/49/L.25: Convention on jurisdictional immunities of States and their property

1. Draft resolution A/C.6/49/L.25 was adopted.

2. The CHAIRMAN said that the Committee had concluded its consideration of the item.

AGENDA ITEM 136: UNITED NATIONS DECADE OF INTERNATIONAL LAW (continued) (A/C.6/49/L.29)

Draft resolution A/C.6/49/L.29: United Nations Decade of International Law

3. Mr. MARTENS (Germany), introducing the draft resolution, said that, following lengthy informal consultations, a consensus text had been achieved for both the resolution and the programme for the activities for the third term (1995-1996) of the Decade. The main sticking point had been paragraph 12 of the resolution and the text before the Committee was based on that of the previous year's resolution.

4. Draft resolution A/C.6/49/L.29 was adopted.

5. Ms. WILLSON (United States of America) said that, despite its reservations concerning the resolution, the United States had joined the consensus because it supported the Decade and accepted the programme for its third term. It remained disappointed, however, that the resolution lacked the rigour appropriate in resolutions of the Sixth Committee. Paragraph 10 of the resolution was particularly misplaced, reading more like a public service announcement, and should not be seen as a precedent for future resolutions on the Decade. In addition, paragraph 12 was not entirely consistent with the views expressed in the informal consultations and was, in any event, redundant in the light of paragraph 4. Those reservations notwithstanding, the United States was confident that the programme would provide an adequate framework for the activities of the Decade.

6. The CHAIRMAN said that the Committee had concluded its consideration of the item.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued) (A/C.6/49/L.22, L.24, L.26 and L.27/Rev.1)

Draft resolution A/C.6/49/L.22: Report of the International Law Commission on the work of its forty-sixth session

7. Draft resolution A/C.6/49/L.22 was adopted.

8. Ms. BOUM (Cameroon) said that her delegation had joined the consensus on the resolution but wished to reaffirm its position on paragraph 4: it believed that the International Law Commission should give priority to consideration of the draft Code of Crimes against the Peace and Security of Mankind.

Draft resolution A/C.6/49/L.27/Rev.1: Draft articles on the law of the non-navigational uses of international watercourses

9. Mr. YOUSIF (Sudan) said that his delegation still had difficulties accepting the fifth preambular paragraph of the resolution, since it represented a substantive revision in what was essentially a procedural resolution and would preempt the work of the Working Group of the Whole on the convention. That paragraph would have been relevant in 1970, when the General Assembly had adopted its original resolution on the issue but was no longer relevant since the International Law Commission had already completed its work on the draft. The Sudan opposed any wording in the resolution which could prejudice the scope of the Convention before it had been elaborated: while States always had the option not to become parties to the convention, they should not stand in the way of the progressive development of international law in such a vital area. His delegation would join the consensus on the resolution if the paragraph in question ended with the word "watercourses" and the text which followed was deleted. Failing that, he proposed either that the Committee should take a separate vote on the paragraph, or, if the paragraph was retained as it stood, that a recorded vote should be taken on the resolution as a whole.

10. Mr. LEGAL (France) said that the paragraph in question had been added on the initiative of France some three weeks previously and discussed in detail in the informal consultations. The views expressed by the Sudan had been stated at that time by Ethiopia and a compromise reached with all interested delegations by retaining the paragraph and adding the one which followed, which made reference to customary law and provided a useful balance.

11. While France was not in principle opposed to the inclusion of such a provision in the convention itself, as a State which was satisfied with the existing regime applicable to the watercourses which it shared with other States, it sought assurances, before the convention was elaborated, that those arrangements would remain unaffected.

12. France was not convinced that a convention was the best instrument for the regulation of the non-navigational uses of international watercourses but had agreed to the idea of a framework convention provided it contained certain assurances, such as those provided for by the disputed paragraph. It was not

France's intention to obstruct the development of international law in that area: by retaining the paragraph and adding the sixth preambular paragraph it had aimed to develop a new instrument which would not call in question existing and entirely acceptable legal arrangements.

13. Mr. TOMKA (Slovakia) said that, in his delegation's opinion, the paragraph in question perfectly reflected treaty law as codified in the Vienna Conventions. The principle that a special statute overrode a general one should be reflected in the resolution and Slovakia therefore asked the Sudan not to press for a vote on that paragraph or on the resolution as a whole.

14. Mr. STRAUSS (Canada) said that his delegation joined those of France and Slovakia in urging the Sudan not to insist on the deletion of the phrase in question or on a vote. The resolution, as worded, reflected customary law and provided the assurances which a large number of delegations required if they were to participate with confidence in future negotiations on the framework convention.

15. Mr. YOUSIF (Sudan) reiterated that, as the issue was one of substance, it had no place in a procedural resolution and pointed out that deletion of the paragraph would not prejudice existing agreements, since those agreements were not mentioned anywhere in the resolution. The provisions of the paragraph could and should be included in the text of the convention itself. If time permitted, the Sudan was prepared to discuss alternative wordings of the paragraph.

16. At the request of the representative of the Sudan, a recorded vote was taken on the fifth preambular paragraph.

In favour: Algeria, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Denmark, Djibouti, Egypt, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Malawi, Malaysia, Maldives, Malta, Marshall Islands, Mauritania, Mexico, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Sierra Leone, Singapore, Slovakia, Spain, Suriname, Sweden, Thailand, Trinidad and Tobago, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Venezuela, Zambia.

Against: Ethiopia, Sudan.

Abstaining: Botswana, Cuba, Ecuador, Fiji, Guyana, Haiti, India, Iran (Islamic Republic of), Iraq, Kenya, Lesotho, Mozambique, Niger, Nigeria, Sri Lanka, Swaziland, Uganda, United Republic of Tanzania, Viet Nam, Zimbabwe.

17. The paragraph was adopted by 93 votes to 2, with 20 abstentions.

18. Draft resolution A/C.6/49/L.27/Rev.1 was adopted.

19. Mr. YOUSIF (Sudan) said that although the Sudan had requested a separate vote on the fifth preambular paragraph, it had joined the consensus on the draft resolution as a whole in the belief that it, and the eventual convention on the law of the non-navigational uses of international watercourses, were designed to achieve a most desirable end. He expressed the hope that the inclusion of the fifth preambular paragraph would not prejudice the adoption of a comprehensive convention, but stressed that the Sudan did not recognize any obligation or commitment to the provisions of that paragraph.

20. Mr. NEGA (Ethiopia), said that his country had objected from the outset to the fifth preambular paragraph, considering it a substantive matter that would prejudge the outcome of negotiations on an eventual convention and had no place in a procedural resolution. Although its position was unchanged, his delegation had been prepared to accommodate the authors of the paragraph, believing that the draft resolution would be adopted by consensus. Since there was no such consensus his delegation had had no alternative but to maintain its original position by voting against the inclusion of the fifth preambular paragraph, despite joining the consensus on the draft resolution as a whole.

21. Mr. Madej (Poland), Vice-Chairman, took the Chair.

Draft resolution A/C.6/49/L.24: Establishment of an international criminal court

22. Mr. LAMPTEY (Ghana), introducing his delegations amendments (A/C.6/49/L.26) to draft resolution A/C.6/49/L.24, said that the establishment of an international criminal court was an important matter; after an extensive debate, the General Assembly had expressed a wish for positive action in that regard, believing that anything less would be a reflection on its credibility. The Sixth Committee should therefore meet the General Assembly's wishes. His delegation had tried to find a consensus on the draft resolution; it had no desire to create problems for the Committee, particularly since its Chairman was a Ghanaian, but it felt obliged to ensure that the wishes of the international community were fulfilled and draft resolution A/C.6/49/L.24 failed in that regard. In fact, it expressed the view of a minority rather than the majority. It was not excessive to require that a conference of plenipotentiaries be convened by 1997: three years provided ample time for preparation and in any case his country's amendments stipulated that any decision should be based on the conclusions of the ad hoc committee. Stressing the urgency of the need for an international criminal court, he pointed out that, had such a court already been in existence, the problem that had soured relations between the Libyan Arab

Jamahiriya and the United States of America, the United Kingdom and France would not have arisen. As it was, the Libyan people were suffering because they would not let their nationals go on trial before jurisdictions in which they had no confidence. He appealed to the Committee to adopt his country's draft amendments, thereby ensuring that the international criminal court would become a reality at some time in the future.

23. Ms. DAUCHY (Secretary of the Committee), explaining the programme budget implications of draft resolution A/C.6/49/L.24, said that meetings of the ad hoc committee to consider arrangements for a conference of plenipotentiaries were envisaged for 3 to 13 April 1995 and, if necessary, 14 to 25 August, although the timing of the former period might have to be adjusted in view of other meetings taking place at that time. However, conference-servicing requirements could be met from within existing resources, programmed under subsection 25 (e) of the programme budget for the biennium 1994-1995. Accordingly, no additional requirements would arise.

24. Ms. ZACHARIAH (Malaysia) said that her country had always maintained that the establishment of an international criminal court should be considered as early as possible. She therefore supported the proposed Ghanaian amendments (A/C.6/49/L.26) to the draft resolution.

25. Mr. LARSEN (Norway), speaking on behalf of the Nordic countries, moved the adjournment of the debate on the amendments proposed by Ghana, in accordance with rule 116 of the rules of procedure. The Nordic countries, which were unequivocally in favour of the establishment of an international criminal court, had been encouraged by the fact that the draft resolution represented a consensus. He stressed that in asking for their motion to be supported the Nordic countries were expressing their preference for consensus, not their objections to an international criminal court.

26. The CHAIRMAN said that according to rule 116 of the rules of procedure, two representatives could speak in favour of a motion for adjournment of the debate and two against.

27. Mr. LAMPTEY (Ghana), said that, while not disputing the right of any country to propose such a motion, he was surprised that the Nordic countries seemed to suggest that consensus was a higher principle than that expressed in his country's amendments. He was opposed to the proposed adjournment, which was unworthy of the Committee. Consensus would indeed be crucial at the conference of plenipotentiaries, when the time actually came to elaborate and adopt the statute of an international criminal court. He urged the Committee to vote against the motion.

28. Mr. LEGAL (France) supported the motion to the effect that no action should be taken on the amendments proposed by Ghana. He did so not out of pride of authorship nor because he considered that the draft resolution was the best possible text, but because it was the only one around which the General Assembly could unite. The draft resolution did not represent a minority view; on the contrary, it was a compromise worked out so that all parties could work together

to achieve their goal. It was a noble enterprise, from which no delegation save that of Ghana had dissociated itself. He emphasized that he was not opposed to the substance of the Ghanaian amendments; if he were, he would have urged the Committee to vote against them outright. His objection lay in the fact that a vote would have the effect of smashing the compromise that had been achieved with such difficulty. It was irresponsible and dangerous to suggest, whether out of pride or for other reasons, that to divide the General Assembly - and thus jeopardize the establishment of an international criminal court - was not a serious matter. France was in favour of establishing a court as soon as possible, but to lay down a time-scale in advance would waste rather than gain time. If their objective was to be achieved, all must feel at ease with the process of achieving it and sterile confrontations must be avoided. In that way it would be far easier for delegations to persuade their authorities to participate in the common effort. Unity was more necessary than ever, as was agreed by virtually all except the delegation which held the chairmanship of the Committee. He urged delegations to quell their disquiet and, avoiding polemics, to remain united in taking no action on the amendments. Only thus would the delicate balance of the consensus that had been achieved be preserved.

29. Mr. AYEWAH (Nigeria) said that the amendments to draft resolution A/C.6/49/L.24 proposed by Ghana referred concretely and directly to a measure which had long been desired by the international community and which the General Assembly must courageously implement: the convening, no later than 1997, of a conference of plenipotentiaries to elaborate and adopt a statute for an international criminal court. In view of those considerations, his country was opposed to the motion to adjourn the debate on the amendments.

30. Mr. CHATURVEDI (India) said that the establishment of an international criminal court was a matter which merited careful consideration. Member States and specialized agencies needed adequate time to study the various provisions of the draft statute elaborated by the International Law Commission, some of which were unprecedented in nature. It would thus be premature to take a decision on the question of convening a conference of plenipotentiaries. His delegation supported the motion to adjourn the debate. It also endorsed the compromise proposal contained in document A/C.6/49/L.8, which had won almost unanimous support during the informal consultations.

31. A recorded vote was taken on the motion to adjourn the debate on the Ghanaian amendments (A/C.6/49/L.26) to draft resolution A/C.6/49/L.24.

In favour: Australia, Austria, Azerbaijan, Bahrain, Barbados, Belarus, Belgium, Bulgaria, Canada, China, Costa Rica, Denmark, Fiji, Finland, France, Georgia, Germany, Greece, Guyana, Haiti, Honduras, Hungary, Iceland, India, Ireland, Israel, Japan, Jordan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Liechtenstein, Luxembourg, Malta, Marshall Islands, Morocco, Nepal, Netherlands, New Zealand, Norway, Oman, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Slovakia, Spain, Sri Lanka, Sweden, Turkey, United Arab Emirates,

United Kingdom of Great Britain and Northern Ireland, United States of America, Uzbekistan.

Against: Angola, Benin, Bolivia, Botswana, Brazil, Burkina Faso, Chile, Colombia, Cuba, Djibouti, Ecuador, Ethiopia, Ghana, Guatemala, Guinea, Libyan Arab Jamahiriya, Malaysia, Mali, Namibia, Niger, Nigeria, Paraguay, Senegal, Sierra Leone, South Africa, Sudan, Uruguay, Venezuela, Zambia.

Abstaining: Algeria, Argentina, Bangladesh, Brunei Darussalam, Cameroon, Congo, Côte d'Ivoire, Cyprus, Egypt, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jamaica, Kazakhstan, Kenya, Lesotho, Malawi, Mauritius, Mexico, Mongolia, Mozambique, Pakistan, Panama, Peru, Philippines, Singapore, Suriname, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Uganda, Ukraine, United Republic of Tanzania, Zimbabwe.

32. The motion was adopted by 58 votes to 29, with 36 abstentions.*

33. Mr. LEONI (Brazil) said that the submission by Ghana of amendments to draft resolution A/C.6/49/L.24 had made it clear that a consensus no longer existed with regard to that text. His delegation had supported the proposed amendments and had consequently voted against the Norwegian motion.

34. Mr. YOUSIF (Sudan) said that his delegation had voted against the Norwegian motion. Every Member State had the right to propose amendments and to have those amendments submitted directly to Committee members for a decision. Had the amendments proposed by Ghana been put to a vote, his delegation would have voted in favour of them.

35. Mr. Lamptey (Ghana) resumed the Chair.

36. The CHAIRMAN said that a vote had been requested on draft resolution A/C.6/49/L.24.

37. Mr. LEGAL (France) said that having adopted the Norwegian motion, the Committee might wish to adopt draft resolution A/C.6/49/L.24 by consensus.

38. Mr. CHATURVEDI (India) said that he, too, was in favour of adopting the draft resolution by consensus.

39. Draft resolution A/C.6/49/L.24 was adopted.

40. Mr. AYEWAH (Nigeria) said that his request to speak before the adoption of the draft resolution had inadvertently gone unrecognized. As a result, his delegation had found itself part of the consensus due to a procedural error. He

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* The delegation of Poland subsequently informed the Committee that it had intended to vote in favour of the motion.

would have preferred a recorded vote to reflect the complexity of the issues involved and, in particular, to acknowledge the importance of the amendments proposed by Ghana. Despite those considerations, his delegation would join the consensus.

41. Mr. FERRARIN (Italy) said that the draft statute for an international criminal court had been the most thorny issue with which the Sixth Committee had had to deal during the current session. That had been reflected in the draft resolution just adopted, which was clearly a compromise text. While seeing no reason to delay the convening of a conference of plenipotentiaries, his delegation had decided to join the consensus as it appeared to be the only practical way to make progress. His country would be glad to host the conference of plenipotentiaries once the decision to convene it had been taken.

42. Mr. VAN BOHEMEN (New Zealand) said that his country favoured the convening as rapidly as possible of an international conference to adopt the draft statute and had been in favour of the proposed amendments to that effect. As it stood, draft resolution A/C.6/49/L.24 placed too much emphasis on the views of those who remained reluctant to commit themselves to the early convening of such a conference. Nevertheless, it was important to approach the entire matter with a broad base of support. For that reason, his delegation had supported the Norwegian motion and had joined the consensus on draft resolution A/C.6/49/L.24.

43. Mr. NANDAN (Fiji) said that while it had been in favour of the amendments proposed by Ghana, his delegation had not wished to hinder the process of consensus at that late stage in the negotiations. It hoped that the proposed amendments would be taken into consideration in the implementation of draft resolution A/C.6/49/L.24.

44. Ms. CARAYANIDES (Australia) said that her country had long been in favour of establishing an international criminal court and saw no reason to delay the convening of a conference of plenipotentiaries to that end. It had nevertheless decided to join the consensus; to do otherwise might have impeded progress towards the final goal of adopting the draft statute.

45. Ms. WILLSON (United States of America) said that she welcomed the adoption by consensus of the draft resolution. Her country planned to participate actively in the ad hoc committee established under the resolution to review the major issues arising out of the draft statute. It hoped that a final version of the statute could be elaborated which would have the widest possible support.

COMPLETION OF THE COMMITTEE'S WORK

46. After an exchange of courtesies, in which Mr. BAYAR (Turkey), Mr. MOLDE (Denmark), Ms. LADGHAM (Tunisia), Mr. GOGOBERIDZE (Georgia), and Ms. PENA (Peru) spoke on behalf of the regional groups of States, the CHAIRMAN declared that the Sixth Committee had completed its work for the forty-ninth session.

The meeting rose at 12.20 p.m.